I did consider, with the utmost care, every aspect of the evidence tendered by the prosecution and the defence and the submissions thereon. It is fundamental that it is not for the defence to prove anything and that all that is required of it is to render an explanation which is reasonable and probable and which casts a doubt either as to the truth of the prosecution or as to the guilt of the accused. I unhesitatingly reached the conclusion that the explanation of the accused did not meet these requirements.

I was completely convinced, for the reasons stated, that the explanation of the accused, far from rebutting the presumption of trafficking under s 37(da), went to reinforce it.

As to sentence, when considering the evidence before arriving at my verdict, I gave this matter my fullest consideration, this being a pre-amendment offence and so I had a discretion to impose either life imprisonment or death. Although the accused had three previous convictions for armed robbery, I did not treat this as of decisive importance though it was admittedly a relevant factor to be considered. However, the quantity of the drugs involved in the commission of the offence was very considerable.

I could, therefore, find no extenuating circumstances which could justify my showing mercy. Accordingly, I found the accused guilty of the offence charged, convicted him and sentenced him to death.

Order accordingly.

Solicitors: *Kumar & Co.*

Reported by *Prof Ahmad Ibrahim*

Rohaya bte Mohd Majzub & Ors v Government of Malaysia

HIGH COURT (KUALA LUMPUR) – ORIGINATING SUMMONS NO 31-21-1987
HARUN J
23 JUNE 1988

Labour Law – Revision of salaries in the public service – Public Service Tribunal set up to resolve anomalies – Implementation of Tribunal's award – Plaintiffs allege being placed on wrong salary scale – Public Service Tribunal Act 1977, ss 2, 4 & 15

The plaintiffs in this case were Broadcasting Assistants Grade I in the Department of Broadcasting. They were appointed on diverse dates between 1980 to 1981 and claimed that they had been placed on the wrong salary scale.

On 1 July 1977 the government implemented Cabinet Committee Report No 1 effective from 1 January 1976. This report revised the salary in the public service. The second revision took effect on 1 July 1980 under Cabinet Committee Report No 2. Anticipating anomalies by these revisions the government established the Public Service Tribunal to determine any dispute in regard to such anomalies. The gist of the present case was that the Broadcasting Assistants Grade I who were appointed on 1 January 1976 were placed on the B9 salary scale. The plaintiffs claimed for emplacement on the B3 salary scale. The difference in the two scales with effect from 1 July 1980 was (a) B3: $1505-$1685 and (b) B9: $745-$1505. The pre-1976 Broadcasting Assistants Grade I were emplaced on the B1, ie $1685-1865, salary scale by an award of the Public Service Tribunal handed down on 12 August 1981. The last para of the award read as follows: 'We rule that Broadcasting Assistant Grade I be given the salary scale of B1: $1585-$1765 on a personal-to-holder basis specially for those holding that post before 1 January 1976; and the B3 salary scale of $1405-$1585 for those appointed on or after that date, both with effect from 1 January 1976.'

The government implemented the first part of the award in respect of Broadcasting Assistants Grade I appointed before 1 January 1986 but did not implement the second part of the award in respect of the 66 plaintiffs.

Held, granting the reliefs in terms of the originating summons:

(1) The tribunal dealt with the anomaly affecting Broadcasting Assistants Grade I as a whole and not the pre-1976 officers in isolation. The award was made on 12 August 1981 and on that date all the 66 plaintiffs were already in employment as Broadcasting Assistants Grade I. It therefore followed that the tribunal intended that the award should apply to the plaintiffs.

(2) The plaintiffs were 'public officers' as defined in s 2 of the Public Service Tribunal Act 1977 ('the Act') and nowhere in the Act did it say that it applied only to public officers who were in employment at the time of the implementation of the Cabinet Committee Report No 1. It followed therefore that the plaintiffs were not bound by the salary offered them in their respective letters of employment.

(3) By s 15(1) of the Act the decision of the tribunal on any anomaly referred to it was final and conclusive and binding on the government.

(4) There was no ambiguity on the award and it applied to all Broadcasting Assistants Grade I who held the post on the date of the award with effect from the date of their respective appointments or promotions.

Legislation referred to
Public Service Tribunal Act 1977 ss 2, 4, 15

KP Gengadharan (*N Mahalingam* with him) for the plaintiffs.

PM Mahalingam (Senior Federal Counsel) for the defendants.

Cur Adv Vult

Harun J: The plaintiffs are Broadcasting Assistants Grade I in the Department of Broadcasting. They were appointed on diverse dates between 1980 and 1981. They claim that they have been placed on the wrong salary scale.

On 1 July 1977, the government implemented Cabinet Committee Report No 1 with effect from 1 Janu-

ary 1976. This report revised the salaries in the public service. A second revision took effect on 1 July 1980 under Cabinet Committee Report No 2. Anomalies were anticipated by these revisions and the government established the Public Service Tribunal under the Public Service Tribunal Act 1977 ('the Act') to determine any dispute in regard to such anomalies.

The gist of the present case is that Broadcasting Assistants Grade I who were appointed after 1 January 1976 were placed on the B9 salary scale. The plaintiffs say they should be placed on the B3 salary scale. The difference in the two salary scales with effect from 1 July 1980 is:

(a) B3: $1505-$1685, and
(b) B9: $745-$1505.

The pre-1976 Broadcasting Assistants Grade I were emplaced on the B1 ($1685-$1865) salary scale by an award of the Public Service Tribunal ('the tribunal') handed down on 12 August 1981. In that case, G Sundaraju and 29 others who were on the B9 salary scale had claimed that they should be emplaced on the A22 salary scale of $745-$2005. The tribunal ordered that they be placed on the B1 salary scale. The final paragraph of the award reads:

> We rule that Broadcasting Assistant Grade I be given the salary scale of B1: $1585-$1765 on a personal-to-holder basis specially for those holding that post before 1 January 1976; and the B3 salary scale of $1405-$1585 for those appointed on or after that date, both with effect from 1 January 1976. In arriving at this decision, we are satisfied that there are no great financial implications and that no new anomalies will arise.

The government implemented the first part of the award, viz in respect of the 30 Broadcasting Assistants Grade I appointed before 1 January 1976 but did not implement the second part of the award in respect of the 66 plaintiffs. Hence the present claim.

There is no affidavit in reply by the defendant but in the course of submission it was urged by the learned senior federal counsel that:

(a) the second part of the award of the tribunal is indefinite in that it is not limited to a particular duration;
(b) the award does not apply to the plaintiffs; and
(c) the plaintiffs are bound in contract by their letter of appointment.

Section 4 of the Act reads:

> The functions of the Tribunal shall be to determine any dispute in regard to any anomaly which is referred to it under the provisions of this Act.

'Anomaly' is defined in s 2 to mean:

> (a) any situation, affecting the remunerations or terms or conditions of service of any public officer or class or group of public officers and arising from the implementation of the recommendations of a salaries commission, that constitutes a departure or deviation from the principles underlying the recommendations of the salaries commission and which remains a departure or deviation from the principles in the recommendations of the Cabinet Committee; or
>
> (b) any situation, affecting the remunerations or terms or conditions of service of any public officer or class or group of public officers and arising from the implementation of the recommendations of the Cabinet Committee, that constitutes a departure or deviation from the principles underlying the recommendations of the Cabinet Committee.

The anomaly referred to by the tribunal was that prior to the Cabinet Committee Report No 1, Broadcasting Assistants Grade I were on the same salary scale as Assistant Producers and Co-ordinating Producers. The latter were emplaced on the A22 salary scale whereas the former were emplaced on B9 salary scale. The tribunal held that Broadcasting Assistants Grade I cannot be placed on the A22 as the minimum entry qualification for Broadcasting Assistants is the Sijil Rendah Pelajaran whereas the minimum entry qualification for Assistant Producers and Co-ordinating Producers is a university degree. Broadcasting Assistants are classified into four grades with direct entry into different grades depending on academic qualifications including a university degree into Grade II but this the tribunal held was insufficient to justify the Broadcasting Assistant Service as a general degree service. The tribunal, however, held that it was wrong for the Cabinet Committee to place Broadcasting Assistants Grade I on the B9 salary scale because Grade I is a promotion post for Broadcasting Assistants Grade II who were also placed on the same salary scale. In the result the tribunal held that Broadcasting Assistants Grade I should be emplaced on the B3 salary scale. An exception was, however, made in respect of Broadcasting Assistants Grade I who were appointed before 1 January 1976 who were emplaced on the B1 salary scale on a personal-to-holder basis for the reason that these officers were on the same salary scale as Assistant Producers and Co-ordinating Producers before the Cabinet Committee Report No 1 and the B1 salary scale is much closer to A22 salary scale of $745-$2005.

It can be seen that the tribunal dealt with the anomaly affecting Broadcasting Assistants Grade I *as a whole* (emphasis mine) and not the pre-1976 officers in isolation. Indeed at para 23 of the award the tribunal observed:

> The Government became aware of the anomaly and has expressed its willingness to offer the salary scale of B3: $1405-$1585 to Broadcasting Assistants Grade I with effect from 1 January 1976.

The tribunal handed down its award on 12 August 1981 and on that date all the 66 plaintiffs were already in employment as Broadcasting Assistants Grade I. If the

tribunal had wanted to exclude them it would have said so in express terms. On the contrary, it made a positive award in respect of officers appointed on or after 1 January 1976. It follows that the tribunal intended that the award should apply to the plaintiffs.

The question is whether the tribunal can do so. On the facts, it is clear that the anomaly arose from the implementation of the Cabinet Committee Report No 1 and therefore falls under definition (b) of 'anomaly' in s 2 of the Act and is not excluded by the exception in the definition as the anomaly here does not arise in consequence of the determination of the tribunal.

The plaintiffs are 'public officers' as defined in s 2 and nowhere in the Act does it say (as was suggested) that it applies only to public officers who were in employment at the time of the implementation of the Cabinet Committee Report No 1. Indeed by s 15(5) of the Act, the decision of the tribunal may be made applicable to any public officer *on the same scheme of service* who is not a party to the anomaly (emphasis mine).

It follows that the plaintiffs are not bound by the salary offered them in their respective letters of appointment.

Finally, by s 15(1) of the Act the decision of the tribunal on any anomaly referred to it is final and conclusive and binding on the government. It appears that the plaintiffs have, since the award of the tribunal been handed down in 1981, requested the government to implement that part of the award that affects them. They are entitled to do so as by s 15(2) of the Act the decision of the tribunal shall be implemented as soon as practicable, but not later than six months from the date of the decision being given. The government finally gave an answer to the request on 19 January 1987 to the effect that the plaintiffs who were appointed after 1 January 1976 will remain on the B9 salary scale. The letter conveying this decision specifically referred to the award of the tribunal. This decision flies in the face of the award. In my opinion, the government cannot do so as it contravenes s 15(1) of the Act. I accordingly held that there is no ambiguity on the award and that it applies to all Broadcasting Assistants Grade I who held the post on the date of the award with effect from the date of their respective appointment or promotion. I therefore granted the reliefs in terms of the originating summons.

Order accordingly.

Solicitors: *Genga Maha Wong & Co.*

Reported by *Al-Mansor Adabi*